

SUPREME COURT.

PAKIYA AMMAL (APPLICANT)

v.

THE DEPUTY COMMISSIONER, HANTHA-
WADDY AND ONE (RESPONDENTS).*

† S.C.

1948

Dec. 24.

Public Order Preservation Act—S. 5A (1) (b)—Stages under proceedings for detention under ss. 5 and 5A of the Act—Police Officer to arrest and detain for 15 days—Then detention may be up to two months—Afterwards order under s. 5A can be taken.

Held : That under s. 5 (1) of the Act the Police Officer can arrest a person whom he suspects of having acted or is about to act in a manner calculated to disturb or assist the disturbance of public tranquillity. On such suspicion the Police Officer may keep the person arrested under detention up to 15 days. This period of 15 days is permitted to enable the Police Officer who acts on reasonable suspicion to investigate into the matter further and satisfy himself whether his suspicion is well founded. The period of detention under this section can be extended to a period of altogether two months if there is a further order from the President or the officer authorized by the President under s. 7.

The next stage would be arrived at on the expiry of two months or if the inquiry had been concluded earlier before the expiry of two months. If the inquiry discloses circumstances justifying action under s. 5A of the Act, then further detention for an indefinite period under this section can be made by an officer to whom the powers of the President are delegated under s. 7 of the Act.

Action under s. 5A cannot be taken on mere suspicion. The officer has to be satisfied that with a view to preventing the person arrested from acting in any manner prejudicial to public safety and maintenance of public order it is necessary to direct the detention of such person.

The order of detention which may be justified under s. 5 is not necessarily justified under s. 5A (1) (b). The fact that a man is an active member of the Burma Communist Party and Leader of Red Guards and an influential member of the Indian Community, and also influenced the strike of the Indian Employees of the Burma Oil Company, are not sufficient to justify detention under s. 5A (1) (b).

Applicant in person.

Ba Sein (Government Advocate) for the respondents.

* Criminal Misc. Application No. 109 of 1948.

† Before SIR BA U, Chief Justice of the Union of Burma, MR. JUSTICE E MAUNG and MR. JUSTICE KYAW MYINT.

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The judgment of the Court was delivered by

MR. JUSTICE E MAUNG.—The detention order in this case made by the Deputy Commissioner of Hanthawaddy on the 14th June 1948 under section 5A (1) (b) of the Public Order (Preservation) Act—leaving out the irrelevant details—reads :

“Whereas have reason to suspect that Suppaya son of Koweinda an active member of (BCP), Leader and Sympathiser of Red Guards, Mingalun, Syriam, is likely to cause a disturbance of public tranquillity and maintenance of law and order, I hereby direct that he be detained until further orders with effect from the 17th June 1948 at Tharrawaddy Jail.”

The learned Deputy Commissioner apparently has not distinguished between the two stages in proceedings for detention under the Public Order (Preservation) Act. Under section 5 (1) of the Act it is open to the Police Officer to arrest a person whom he suspects of having acted or of acting or about to act in any manner calculated to disturb or to assist the disturbance of public tranquillity. On such suspicion and following the arrest the Police Officer may keep the person arrested in detention for a period not exceeding 15 days. Clearly this period of 15 days was permitted to enable the Police Officer, who acted on reasonable suspicion, to investigate into the matter further and satisfy himself whether his suspicion was founded on tangible materials or not. This period of detention can be extended to a period of altogether two months if the Police Officer can obtain further orders in that behalf from the President or from such other officer as the President may under section 7 of the Act appoint for that purpose.

The next stage would be arrived at on the expiry of the two months or, if the enquiry had been concluded

earlier, before the expiry of two months. If the enquiry discloses circumstances justifying action under section 5A of the Act, then further detention for an indefinite period under this section can be made by an officer to whom the powers of the President are delegated under section 7 of the Act. When action under section 5A is to be taken it is not mere suspicion that would justify it. What has to be borne in mind by the officer acting under this section is that he has to be satisfied with respect to the person proposed to be detained indefinitely that "with a view to preventing him from acting in any manner prejudicial to the public safety and the maintenance of public order it is necessary" to direct his detention. It is obvious from a comparison of the wording of section 5 and section 5A of the Act that different considerations arise under the two sections.

In this case the order of detention purported to have been made under section 5A (1) (b) of the Act may, on the face of it, be justified if made under section 5 but is not certainly justified under section 5A. On that ground alone the detenu Suppaya is entitled to an order of release from this Court.

On the merits as disclosed in the affidavit filed before us by U Sein Maung, Deputy Commissioner, Hanthawaddy, also, the order of detention does not appear to be justified. Apart from stating that the detenu was an active member of the Burma Communist Party and was the leader of Red Guards in Mingalun, Syriam and an influential member of the Indian Community and as such influenced the Indian employees of the B.O.C. to go on strike, it is not alleged that as a member of the Burma Communist Party he acted or was acting in any manner prejudicial to the public safety or the maintenance of public order. It is not also claimed that Suppaya in inciting

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or influencing the Indian employees of the B.O.C. to go on strike used unlawful means. It must be remembered that to organize labour and to go on strike without using illegal means are rights which the Constitution has recognized.

Suppaya who is now before us on bail is therefore discharged. His bail bond will be cancelled.